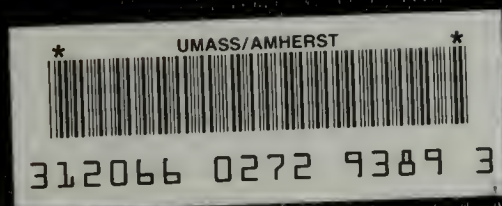



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INFORMATION

on

1972

LEGISLATION

affecting

CIVIL SERVICE

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The Commonwealth of Massachusetts

Division of Civil Service

294 Washington Street, Boston 02108

OFFICE OF THE DIRECTOR

TO APPOINTING AUTHORITIES:

September 25, 1972

Your attention is invited to the following legislation enacted in 1972 affecting the Civil Service Law and Rules.

APPLICATIONS, CERTAIN INFORMATION NOT REQUIRED
TO BE SET FORTH ON APPLICATION FORMS

Chapter 382 (effective June 8, 1972) amends Section 13 of Chapter 31. It makes certain changes in punctuation and inserts the words "or dispositions" to indicate that the provisions apply to dispositions as well as to arrests. This part of the amended sentence reads as follows (the inserted words are underlined):-

".... ; nor shall such applicant be required to furnish any information of arrests or dispositions for the following misdemeanors:-
drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace;
provided, that the date of disposition of said offenses was ten years or more prior to filing of said application."

Chapter 382 will require a change in wording on the Civil Service Application Form. Revision of the form is now under consideration.

Your attention is called to the following closely related Acts:-

Chapter 686 of the Acts of 1971:-

An Act relative to files in the office of the commissioner of probation. ("Sealed Records")

Chapter 404 of the Acts of 1972:-

An Act providing for the sealing of certain delinquency records in the office of the commissioner of probation.

Chapter 428 of the Acts of 1972:-

An Act prohibiting unlawful discrimination by employers for the failure of employees or prospective employees to furnish information of certain arrests.

Chapter 805 of the Acts of 1972:-

An Act providing for the establishment and administration of a criminal offender record information system.

Chapter 806 of the Acts of 1972:-

An Act relative to the law providing for the regulation of drugs and controlled substances.

CORRECTION, DEPARTMENT OF - SCHOOL TEACHERS

Chapter 311 (effective August 23, 1972) amends Section 5 of Chapter 31. Section 5 contains a listing of certain offices and positions which are exempt from the Civil Service Law and Rules. Chapter 311 adds teachers, whose duties require the possession of a teacher's certificate, in the State Department of Education to these exemptions.

Instructors in the Massachusetts Correctional Institution, Walpole, the Massachusetts Correctional Institution, Concord, and the Massachusetts Correctional Institution, Norfolk, who have been made subject to the provisions of the civil service law and rules by the provisions of section four of chapter thirty-one of the General Laws remain subject to Civil Service. If any persons, prior to the enactment of Chapter 311, had acquired Civil Service status as School Teachers in the Department of Correction, their Civil Service rights remain unimpaired.

CORRECTION, DEPARTMENT OF; TRAINING ACADEMY,
CORRECTION OFFICER TRAINEE, PROBATIONARY PERIOD OF CORRECTION OFFICER, ETC.

Section 9 of Chapter 777 (effective October 16, 1972) amends Section 9 of Chapter 125. The Section requires the Commissioner of Correction to establish a training academy, with the cooperation of the Massachusetts Police Training Council, for the training of correction officers, other employees of the Department, correction officer trainees, and officers of county correctional facilities.

The Section provides for appointment of correction officer trainees (who shall not be subject to the Civil Service Law) for a period of full-time training, including on-the-job training. Upon successful completion of training the trainee shall be appointed if a vacancy exists, to the position of provisional correction officer, if there is no suitable eligible list.

The Section requires newly appointed correction officers who have not successfully completed training to be assigned to a period of training. A nine month probationary period is required for correction officers. Time spent in training shall be considered a part of the probationary period.

There have been some changes in the provisions of the Section regulating the employment of persons in the Department of Correction who have been convicted of a felony or who have been confined in any jail or house of correction.

CORRECTION OFFICER, HIGH SCHOOL GRADUATES
OR THE EQUIVALENT

Chapter 297 (effective August 16, 1972) amends the third paragraph of Section 6A of Chapter 31. This paragraph requires that applicants for appointment have graduated from high school or possess an equivalency certificate issued by the Department of Education or to have served at least three years in the armed forces of the United States (and whose last discharge or release was under honorable conditions). The paragraph applies to police officers in cities and towns, the M.D.C. police force, the M.B.T.A. police department and capitol police officers. The amendment adds Correction Officers.

DISADVANTAGED AND PERSONS FORMERLY CONVICTED OF A CRIME

Chapter 612 (effective October 7, 1972) amends paragraphs (f) and (n) of Section 2A of Chapter 31. Paragraph (f) requires that the Director of Civil Service shall establish standards for offices and positions which shall not be waived in the case of any applicant provided that provisions shall be made for promoting opportunities for the employment of the handicapped. Section 612 amends Section 2A by adding to the latter provision disadvantaged persons and persons formerly convicted of a crime.

Paragraph (n) of Section 2A concerns the duty of the Director of Civil Service to develop programs and to advise and assist appointing authorities in promoting opportunities for employment. This paragraph has applied to the handicapped and persons convicted of violating the law. Chapter 612 extends the provisions of the Section to disadvantaged persons.

ELIGIBLE LISTS

Chapter 406 (effective September 6, 1972) amends Section 12 of Chapter 31. The amendment strikes out the following sentence:-

If more than one similar eligible list exists for the same position, certification shall first be made from the list with the earliest date of establishment and in accordance with the civil service laws and rules governing certification.

The following two sentences were inserted in place of the deleted sentence:-

Not more than one eligible list shall be established or maintained for any one position. Eligibility of applicants for placement on, and their standing on the eligible list shall be determined on the basis of the last examination taken for such position.

In the future, instead of considering an existing list as list number one and a new list as list number two (et cetera, if there were more than two lists) the results of any new examination will be interfiled with any already existing list. Applicants will be placed on the list on the basis of the last examination taken. There will be in all cases, only one list.

It is important to realize that a person who passes an examination and is placed on the eligible list who subsequently fails an examination for the same position will have his name removed from the list due to such failure.

The promotional procedure set forth in Chapter 31 is quite distinct from the procedure for appointment from an open competitive list. A promotional list (although it will be combined with another promotional list for the same position) will not of course, be combined with a list established for an appointment.

The provisions of Chapter 406 will apply only to lists established after the effective date of the Act.

EXAMINATION, REVIEW OF

Chapter 147 (effective July 5, 1972) amends Section 12A of Chapter thirty-one. The amendment adds a reference to the "notice (to the applicant) that he did not meet the requirements for admission to the examination." When certain requirements are

TO APPOINTING AUTHORITIES

MEMORANDUM ON LEGISLATION

established for a position, these requirements are printed on the examination announcement. Applicants who do not meet these requirements are allowed, on their own responsibility, to take the examination. If the examiner finds that the applicant does not meet the requirements the applicant is sent a notice so stating. This has been the policy. The insertion of the above quoted words, therefore, will require no change in procedure. The procedure now becomes a matter of law rather than of policy. The important change is the insertion of the provision that the applicant so notified may "request a review of the finding by the director that he did not meet the requirements for admission to the examination established by the director". Prior to the insertion of this provision there was considerable question as to whether the director had the authority to make such a review. Chapter 147 settles this question.

A further amendment is made by the insertion of the words pertaining to "a request for a review of his marking of training and experience". Many examinations consist of the written test and a rating of training and experience. Both are marked and the applicant's final marking is based on both marks. Previous to the enactment of Chapter 147 the law referred to a review of "the markings of his examination paper". This raised the question as to whether the statute meant the written test only was subject to review. The policy has been to accept such requests and to review the markings of training and experience. Here, also, it is a matter of procedure now becoming a matter of law rather than of policy.

FEDERAL EMERGENCY EMPLOYMENT ACT POSITIONS
EXEMPT FROM CIVIL SERVICE

Chapter 710 (effective July 14, 1972) provides that temporary positions created under the Federal Emergency Employment Act of 1971, Public Law 92-54, shall not be subject to the provisions of Chapter 31 (the Civil Service Law).

Chapter 731 of the Acts of 1971 which contained provisions pertaining to employment in such positions subject to the Civil Service Law has been repealed.

It is important to note that the exemption from the Civil Service Law of Federal Emergency Employment Act positions does not include law enforcement officers or members of fire fighting forces. Law enforcement officers and members of fire fighting forces remain subject to Chapter 31 of the General Laws even though the positions have been created under the Federal Emergency Employment Act.

FIRE FIGHTERS - EQUAL PREFERENCE WITH VETERANS
(See under Police Officers and Fire Fighters on page 7)

FIRE FIGHTERS, RESIDENCY REQUIREMENTS

Chapter 370 (effective August 30, 1972) does not amend Chapter 31 (the Civil Service Law). It amends Section 58E of Chapter 48. The Section deals with residency requirements. Prior to this amendment the provisions of the Section did not affect the application of the Civil Service Law.

Section 58E, as amended reads:-

In any city or town which accepts this section,
applicants for positions in and members of the
regular fire department of said city or town
may reside outside said city or town; provided,
they reside within the commonwealth and within
ten miles of the limits of said city or town.

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Since the new section applies to "applicants for positions", in the future, in any city or town which has accepted or does accept the Section, applicants for fire fighter will not be required to reside in the city or town in which they may seek appointment as fire fighter, provided they "reside within the commonwealth and within ten miles of the limits of said city or town."

To date, cities and towns which accepted the Section had no reason for notifying the Division of Civil Service of their action. If any city or town has already accepted Section 58E the Director of Civil Service should be officially notified. Similarly, a formal notice should be forwarded promptly to the Director reporting any future acceptance of the section.

ORAL EXAMINATION

Chapter 76 (effective June 7, 1972) amends Section 10 of Chapter 31 and inserts provisions in the Civil Service Law allowing for oral examinations. The sentences stricken out by the amendment reads as follows:-

Oral interviews, whenever held, shall not have any weight in the examination. Practical tests shall not be deemed to be oral interviews. Any such examination may include a practical test, or written examination or both.

For many years oral examinations have not been permitted by the statutes. It is believed that certain kinds of offices and positions can best be filled by means of an oral examination. If an oral examination is given it must be in conjunction with a written examination. The amendment further provides that if an oral examination is given it shall be conducted by a board of not less than three persons chosen by the Director of Civil Service.

PARAPLEGIC PERSONS

Chapter 619 (effective October 7, 1972) inserts a new Section, Section 10A, in Chapter 31. It provides for a method of authorizing the appointment of a paraplegic by the Director of Civil Service. The appointing authority must:- make a request for the approval for the employment of a paraplegic in the position, certify that in his opinion the position can be performed by a paraplegic, and forward the name of the paraplegic to the Director with a certificate from his attending physician that the person is a paraplegic. The Director may require any such paraplegic person to undergo such tests as in his opinion will test the fitness of the applicant to properly perform the duties of the position. A written statement may also be required including the following:-

- (1) a statement by the appointing authority as to the specific position, title grade and duties - to be assigned to the paraplegic person who is to be employed, and the title of the immediate supervisor of such position,
- (2) a statement by the appointing authority prior to employing the paraplegic person that the paraplegic person
 - (a) can satisfactorily perform the duties of the position,
 - (b) is qualified to do the work without hazard to himself or to others, and
 - (c) is socially competent to maintain himself in a work environment.

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The final paragraph of the new Section provides that any State position of a paraplegic person who has been employed in a year-round temporary position for a continuous period of three years or more shall be deemed to be a permanent position.

The first paragraph contains the words "a position within the police or fire department" which indicate that the provisions of the section are limited to said departments but the last paragraph clearly covers State positions. There is, therefore, a question as to the full application of the Section. It may be necessary to file corrective legislation to clarify this matter.

POLICE EXAMINATION, AGE LIMIT

Chapter 141 (effective April 6, 1972) was enacted because of the suspension of Civil Service examinations for police services positions due to the court case. Chapter 141 had an emergency preamble and became effective on approval, April 6, 1972. Section 5B of Chapter 31 of the General Laws provides that no person who has reached his thirty-fifth birthday is eligible to take a police examination. Because of the delays resulting from the court case, which required an extensive review and study of the kind of examination to be held and other matters, no Police Services Examination has been held since September 26, 1970. Under usual circumstances several examinations would have been held since that date. It is important to note the provisions of Chapter 141 apply only to the "next police examination" held after the effective date of the Act. This examination is scheduled to be held September 30, 1972.

The provisions of Chapter 141 apply to applicants who filed applications on and after February 28, 1970 who had not reached their thirty-fifth birthday at the time of filing the application but have since reached or will reach their thirty-fifth birthday prior to the date of the next examination. Such persons shall be eligible to take the next examination and to be appointed if otherwise qualified.

POLICE FORCES IN CITIES AND TOWNS - RESIDENCY REQUIREMENTS

Chapter 226 (effective July 31, 1972) amends Section 48A of Chapter 31. The amendment RETAINS the following provisions:-

Applicants for appointment to a police force (subject to the Civil Service Law) shall not be required to be a resident of the city or town at the time of filing application for the examination.

If the appointee does not reside in the city or town when he is appointed he shall within nine months after appointment establish his residence in the city or town or within ten miles of the perimeter of the city or town within Massachusetts.

The change made by Chapter 226 is as follows:-

The following provision is RETAINED:- If a person has resided in a city or town for one year immediately prior to filing his application for examination and has the same standing as any person not so resided his name shall be placed ahead of the non-resident.

However, an alternative to this provision is now provided, IF THE APPOINTING AUTHORITY MAKES A WRITTEN REQUEST to the Director of Civil Service PRIOR TO THE ESTABLISHMENT OF THE ELIGIBLE LIST. If the written request is so made, the Director of Civil Service will place the names of all persons

TO APPOINTING AUTHORITIES

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who have resided
in a city or town for one year immediately prior to
the date of examination ahead of the name of any
non-resident. The names of the residents will be
listed in accordance with the provisions of Section
23 of Chapter 31 in the following order:- disabled ^{VETERANS}
veterans, and non-veterans. The non-residents will
then be listed in the same order, that is, disabled
veterans, veterans and non-veterans.

It is important to note, (1) the request must be made by the appointing authority, in writing and (2) it must be made before the eligible list is established. An appointing authority may not wait and see how the state-wide list looks and then request a "resident-list" or vice versa.

Each appointing authority should review the provisions of Chapter 226 carefully. If any determine that the request described above should be made it should be submitted on a timely basis.

POLICE OFFICERS AND FIRE FIGHTERS,
EQUAL PREFERENCE WITH VETERANS

Chapter 380 (effective June 8, 1972) amends Section 23C of Chapter 31. Chapter 380 changes provisions inserted by Chapter 346 of 1971. It provides that any regular police officer who has served for twenty-five years and who passes an examination for promotion to the grade of police sergeant or higher, or any regular fire fighter who has served for twenty-five years and who passes an examination for promotion to the grade of fire lieutenant or higher, shall have equal preference with veterans in being placed upon the eligible list for said promotion. (The 1971 Act applied to the grades of police lieutenant and fire captain, respectively.)

The practical effect of Chapter 380 will be that persons who have the required years of service who pass the promotional examinations covered by the statute will be granted the two additional veteran's promotional points.

POLICE SERVICES, TRAINING

Chapter 697 (effective October 11, 1972) amends Section 96B of Chapter 41. The Section requires police officers receiving an appointment on a permanent full-time basis to be assigned within nine months after his appointment (previously the law stated six months) to attend a police training school approved by the Massachusetts Police Training Council for a course of study lasting at least six weeks and to satisfactorily complete the course. The Section has been extended to cover all cities and towns; previously it applied only to municipalities having more than five thousand inhabitants. In addition, the following shall now be required to attend and satisfactorily complete the course:-

the metropolitan district commission police, the
Massachusetts Bay Transportation Authority police,
the capitol police and employees of the registry
of motor vehicles having police powers

The provisions of the second paragraph of the Section requiring such officers to complete certain courses of study of in-service training have been extended to include employees of the Registry of Motor Vehicles who have police powers.

REGISTRY OF MOTOR VEHICLES - CERTIFICATES OF TITLE

Chapter 756 (effective October 15, 1972) amends the second paragraph of Section 29 of Chapter 90D. Chapter 90D contains provisions of law pertaining to Certificates of Title. The amended paragraph reads as follows:-

Officers and employees engaged in carrying out the provisions of this chapter shall be exempt from the provisions of chapter thirty-one; provided, however, that officers or employees who are subject to said chapter thirty-one may be assigned by the registrar to assist in the administration of the provisions of this chapter whenever he deems it to be necessary. Nothing in this paragraph shall be deemed to authorize any person engaged to carry out the provisions of this chapter to be assigned to or be employed in any office or position subject to said chapter thirty-one.

REGISTRY OF MOTOR VEHICLES - MOTOR VEHICLE EXAMINER

Chapter 105 (effective June 25, 1971) amends Section 29 of Chapter 90. Section 29 previously provided that "No person who has passed his thirty-fifth birthday shall be appointed for the first time as such (motor vehicle) examiner." The provision now reads:- "An applicant who has passed his thirty-fifth birthday shall not be appointed as an examiner; provided, however, that if such applicant has not attained age thirty-five at the time he took the examination and is otherwise eligible, he shall be certified for appointment as an examiner." The Act was made effective on June 25, 1971, which was the date the most recent eligible list for motor vehicle examiner was established.

REHABILITATED HANDICAPPED PERSONS

Chapter 532 (effective September 27, 1972) amends Chapter 149 of the General Laws by inserting Section 24K which reads as follows:-

Whoever, personally or by an agent, shall dismiss from employment or refuse to hire, solely because of his handicap, any rehabilitated handicapped person who possesses the physical and mental capacity to perform the functions required by said employment shall be punished by a fine of not less than twenty-five nor more than two hundred dollars.

While this new Section is not limited to Civil Service positions its provisions are consistent with the provisions of the Civil Service Law pertaining to the development of programs for the employment of handicapped persons within the Civil Service system.

RIGHTS OF PUBLIC EMPLOYEES, PROTECTION OR RESTORATION OF

Chapter 75 (effective June 7, 1972) extends the effective date of Chapter 364 of the Acts of 1970 to December 31, 1974. Said Chapter 364 is a Temporary Act which authorizes the Director of Civil Service, with the approval of the Civil Service Commission, to take any necessary action to protect the rights of any person which have been prejudiced through no fault of his own.

SENIORITY LISTS, POSTING OF

Chapter 282 (effective August 16, 1972) amends Section 15C of Chapter 31. Section 15C contains provisions relative to the yearly filing and posting of a list of the civil service personnel of a department setting forth titles and dates of seniority. The amendment applies to the posting of the list. Previously the law required that a copy of the list be posted in a prominent place in the department. The amendment provides that a copy shall be posted in all areas of the department where five or more civil service employees start their tour of duty.

SUSPENSION OF PERSONS FROM THE SERVICE OF THE COUNTIES, CITIES, TOWNS
AND DISTRICTS WHILE UNDER INDICTMENT FOR MISCONDUCT IN OFFICE

Chapter 257 (effective August 9, 1972) authorizes the appointing authority to suspend a person who is under indictment for misconduct in office during the period the person is under indictment. There has been a similar law applicable to the commonwealth agencies and authorities created by the General Court since 1962 (Chapter 798, Acts of 1962). The same provisions will now apply to officers and employees of counties, cities, towns and districts.

UNASSEMBLED EXAMINATIONS

Chapter 389 (effective September 6, 1972) amends Section 6B of Chapter 31. The amended paragraph will read "Whenever qualifications of a scientific or professional character requiring education at or above the master's degree level are established for an office or position by statute or under authority thereof, the director, may rely upon an unassembled examination to qualify and rank applicants". The underlined words have been inserted in place of the word "doctorate".

VETERAN'S PREFERENCE

Chapter 98 (effective June 13, 1972) amends Section 21 of Chapter 31 by striking out Clauses (1) and (2). Section 21 contains the provisions setting forth the meaning of the word "veteran" as used in Chapter 31. Clause (2) had been ruled unconstitutional by a court decision. Clause (2) read as follows:-

- (2) (a) Whose domicil was in Massachusetts for not less than six months next prior to his entry into such service in the armed forces, or (b) who has resided in the commonwealth for five consecutive years next prior to the date of claiming preference as a veteran with the proper authority.

The provisions of Clause (1) have been retained and rewritten to adjust the numbering and wording as necessitated by the striking out of Clause (2).

WORK-TRAINING PROGRAMS FOR DISADVANTAGED PERSONS,
APPOINTMENT AFTER SUCCESSFUL COMPLETION

Chapter 778 (effective October 16, 1972) provides that, notwithstanding the provisions of the Civil Service Law, an appointment to a Civil Service position may be made of a person who has successfully completed a work-training program for disadvantaged persons. The following provisions are set forth:-

- (1) The appointment may be made only to the lowest job group or grade within each class of positions as determined by the Director of Civil Service

TO APPOINTING AUTHORITIES

MEMORANDUM ON LEGISLATION

- (2) The Secretary of the Executive Office of Manpower Affairs shall:-
certify which work-training programs meet the qualifications and work specifications of the positions under Civil Service and the Bureau of Personnel,
certify which work-training programs adequately prepare the trainee to perform the duties of the position, and
shall furnish a list of the positions to the Director of Civil Service.
- (3) Such training programs shall be advertised to the public.
- (4) Such training programs shall be available to permanent employees of the Commonwealth and its political subdivisions who meet the criteria for disadvantaged persons.
- (5) Such training programs shall have been registered with the Division of Employment Security.
- (6) Such training programs shall be sponsored or conducted by or in cooperation with the Commonwealth, a political subdivision thereof, or the Federal Government.
- (7) Prior to appointment under the Act (Chapter 778) the persons so trained shall have passed an examination administered by the Director of Civil Service.

Eligible List

The names of disadvantaged persons who satisfactorily pass the examination shall be placed on the list in the order of their passing grade.

The provisions of Section 23 of Chapter 31 shall apply, that is, the eligible list will be established in the following order (a) disabled veterans, (b) veterans, (c) widows or widowed mothers of veterans, (d) all others.

The eligible list shall be called a "Special Eligible List."

When an eligible list already exists for the position for which the work-training examination has been given, the Director of Civil Service shall certify names alternately from such eligible list and the special eligible list until the required number of eligibles is certified.

When names are so certified alternately the names shall be grouped as provided in Section 23; see above for explanation of order of names under Section 23.

Promotional Lists

Nothing in Chapter 778 shall change the provisions of the Civil Service Law as they apply to promotional examinations.

Names from a departmental promotional list shall be certified before names from such a "Special Eligible List".

TO APPOINTING AUTHORITIES

MEMORANDUM ON LEGISLATION

Disadvantaged Person Defined

A person

- (A) whose annual net income, in relation to family size and location, does not exceed low-income guidelines established by the federal government, or
- (B) does not have suitable employment and is (one or more) of the following:-
 - (1) a person who does not have a high school education or its equivalent,
 - (2) a member of a minority group,
 - (3) a person under twenty-one years of age, forty-five years of age or older, or
 - (4) a handicapped person.

It is provided that such persons - (1) through (4) above - shall not be barred from consideration as a disadvantaged person by reason of receiving a salary from the Commonwealth.

Chapter 778 does not apply to police services positions or to fire fighters.

Under the Act the Bureau of Personnel is required to be available for assistance in designing a training program to meet state specifications of the positions for which persons referred to in the Act are trained.

Chapter 778 is a temporary Act and ceases to be operative on July 1, 1975.

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Requests for copies of the Acts referred to herein should be directed to the Secretary of the Commonwealth, Public Documents Division, Room 116, State House, Boston, Massachusetts. See Appendix A for a listing of the various Chapters summarized in the document.

I recommend that you retain this memorandum for future references and suggest that it be filed with the 1968, 1969, 1970 and 1971 editions. I would appreciate it if the contents of this document are called to the attention of all persons connected with personnel matters so that there may be proper understanding and handling of matters affecting the Division of Civil Service.

If you need extra copies of this document, please notify me forthwith. A limited number of extra copies were made. These will be held for a reasonable time for such requests for additional copies and then released for general distribution to the public.

Very truly yours,

Mabel A. Campbell

(MRS.) MABEL A. CAMPBELL
DIRECTOR OF CIVIL SERVICE

CIVIL SERVICE COMMISSION

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WAYNE A. BUDD
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